

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL,	)	
et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil No. 96-1285
	)	(RCL)
BRUCE BABBITT, Secretary	)	
of the Department of Interior,	)	
	)	
LAWRENCE SUMMERS, Secretary of	)	
the Treasury, and	)	
	)	
KEVIN GOVER, Assistant	)	
Secretary of the Department of Interior,	)	
	)	
Defendants.	)	
_____	)	

ORDER

On October 8, 1999, the Court orally Ordered the above captioned matter into mediation and simultaneously appointed Stephen Saltzburg as the Mediator. The oral order is hereby confirmed. It is now hereby further ORDERED as follows:

(1) The defendants shall bear all costs of the Mediator and any experts, consultants or others engaged by the Mediator until and unless the parties otherwise agree. Each party shall be independently responsible for its own expenses associated with the mediation process, attorneys fees, or any of their own expert expenses it deems necessary for the process.

(2) No party or counsel for that party shall be bound by anything said or done during the mediation process unless a written settlement is reached, executed, and approved by all the

necessary parties, counsel, and the appropriate government officials for the United States. If an agreement is reached by the parties through mediation, that agreement shall be reduced to writing. Those individuals with ultimate authority to bind the parties will simultaneously execute any final settlement agreement. The parties make no admission of fact or law, responsibility, fault, or liability by entering into and participating in the mediation process.

(3) The parties will appear before the Court at 9:30 a.m. on November 1, 1999, at which time the Court will decide whether mediation should continue or whether at that time the Court should release its Opinion regarding the Trial that concluded July 1999. No matter regarding this case other than the release of such Opinion is being stayed pursuant to this Order.

(4) If either party determines that the mediation process has no hope of success, such determination will be reported to the Court and the Court may enter an Order terminating the mediation.

(5) The settlement discussions will be confidential to facilitate consent resolution, in whole or in part, and to allow the defendants and the plaintiffs, through and with their counsel, to engage in frank and productive discussion. All communications relating to possible consent resolution will be made through the attorneys for the plaintiffs or the named plaintiffs on the one hand and the Department of Justice or the Assistant Secretary for Indian Affairs on the other hand.

(6) Such discussions and communications including documents will be confidential. Rule 408 of the Federal Rules of Evidence shall be applicable to them. Information that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable merely because of its use or disclosure in the discussion.

(7) Unless otherwise agreed among the parties, the defendants may disclose the substance

of the discussions only within the Departments of Justice, Interior, and Treasury; the Office of Management and Budget and the White House Office within the Executive Office of the President. Plaintiffs' counsel shall have the same right to disclose the substance of such discussions to inform their clients and to make recommendations to them on similar subjects. In addition to observing the confidentiality requirements of this Order, the parties recognize that some information that could be helpful to the discussions may be especially sensitive. If either party finds it appropriate to disclose such information during the discussions, it may seek agreement on additional protections of the information, with or without the assistance of the Mediator.

(8) The parties and the Mediator shall not disclose to any other person not a party or not an expert retained by a party or the Mediator, including the news media, the substance of any such discussions, or any information regarding the substance of the discussions, including without limitation the parties' statements or proposals.

(9) The parties will not publicize the substance of the mediated discussions. No public information personnel, press spokesman, media consultant or other person not directly involved in decision making shall be provided any information about the substance of these discussions and they shall be bound by the other provisions of this Order.

(10) If and when the parties give any such information to others in accordance with the Order, or make any such recommendations, the recipients thereof will be advised of the existence and nature of this Order and of their obligation to maintain the confidentiality of such information or recommendations.

(11) At some point it may be appropriate for the parties to consult with or inform Tribes

of the substance of these discussions; if so, such consultations will require the approval of the parties before they are made. Subject to the preceding sentence, this subparagraph shall not affect the duty of the Assistant Secretary of the Interior for Indian Affairs to consult with Indian Tribes, including his duty to consult on the Interior Department's trust reform initiatives.

(12) No party may subpoena any documents prepared by or for the Mediator or subpoena the Mediator to testify as a witness regarding the mediation process. The Mediator shall not testify on behalf of any party or participate as a consultant or expert in any federal or state judicial or administrative proceeding regarding the case or issues in or relevant to this case or the mediation process.

(13) The confidentiality provisions of this Order shall remain in full force and effect without regard to whether the case or any issues therein shall be concluded by agreement, final judgment, or otherwise, and the requirements of confidentiality shall survive the termination of the mediation.

SO ORDERED.

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Royce C. Lamberth  
United States District Court

Dated: